

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	:
SEARS HOLDINGS CORPORATION, <i>et al.</i>,	:
	:
	:
Debtors.¹	:
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**Chapter 11
Case No. 18-23538 (RDD)
(Jointly Administered)**

STIPULATION AND ORDER SETTING BRIEFING SCHEDULE

This Stipulation and Order (the “**Stipulation**”) is made as of October 24, 2019, by and between Sears Holdings Corporation (“**SHC**” or “**Sears**”) and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Transform Holdco LLC (“**Transform**” or “**Buyer**” and together with the Debtors, the “**Parties**”), through their respective and duly authorized counsel of record.

RECITALS

WHEREAS, on October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, on January 17, 2019, Transform entered into an Asset Purchase Agreement (as may be amended, restated, supplemented or modified from time to time, the “**APA**”) with Sears and its subsidiaries party thereto (together with Sears, the “**Sellers**”);

WHEREAS, on February 8, 2019, the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “**Sale Order**”) (ECF No. 2507) was entered by the Bankruptcy Court, approving the sale of certain assets of the Sellers to the Buyer;

WHEREAS on May 24, 2019, Debtors filed their *Supplemental Motion to Enforce the Asset Purchase Agreement* (the “**Motion to Enforce**”) (ECF No. 4029);

WHEREAS, on May 25, 2019, Transform filed an Adversary Complaint (ECF No. 4033) (Adversary Proceeding No. 19-08262) (the “**Adversary Complaint**”) against the Sellers that are currently the Debtors in this chapter 11 proceeding (the “**Defendants**”) asserting, *inter alia*, a claim for breach of the APA based in part upon allegations that the Defendants had failed to make

certain payments to vendors in the week before the APA's closing date on a timely basis and in the ordinary course of business (the "**Closing Date**");

WHEREAS on July 11, 2019, the Bankruptcy Court held a hearing on the Motion to Enforce and Adversary Complaint;

WHEREAS, on August 6, 2019, Transform filed a *Supplemental Memorandum of Law in Support of Transform Holdco LLC's Adversary Complaint* (ECF No. 4767) in which it argued that these delays in vendor payments were a breach of Section 8.6 of the APA and that Transform was thus entitled to damages for the breach in the amount of \$66 million;

WHEREAS, on September 12, 2019, the Bankruptcy Court held a hearing (the "**September 12 Hearing**") to address, *inter alia*, whether the abovementioned delays in vendor payments were, in fact, a breach of Section 8.6 of the APA and whether Transform was entitled to damages for any breach;

WHEREAS, at the September 12 Hearing, the Bankruptcy Court, having considered the Parties' submissions and all evidence attached thereto, the testimony given, and the Parties' arguments, invited the Parties to submit further briefing on the issue of what amount of damages, if any, Transform proved that it had incurred and would have been entitled to had the Bankruptcy Court found that the Defendants had breached Section 8.6;

WHEREAS, the Bankruptcy Court invited briefing on damages limited to what is in the record and stated that it did not want new evidence; and

WHEREAS, the Parties have agreed to set a briefing schedule applicable to the court-ordered briefing on what amount of damages, if any, Transform proved that it had incurred and

would have been entitled to had the Bankruptcy Court found that the Defendants had breached Section 8.6 of the APA.

NOW, THEREFORE, based upon the foregoing recitals, which are incorporated as though fully set forth herein, it is hereby Stipulated and Agreed, and upon Bankruptcy Court approval it shall be ordered, as follows:

1. Transform will file a brief addressing the amount of damages, if any, it proved that it had incurred and would have been entitled to had the Bankruptcy Court found that the Defendants had breached Section 8.6 of the APA (the “**Section 8.6 Damages Brief**”) by no later than Friday, November 8, 2019 at 5:00 p.m.

2. The Defendants will file a response to the Section 8.6 Damages Brief by no later than Friday, November 22, 2019 at 5:00 p.m.

3. Transform reserves the right to request reply briefing to Debtors’ response.

4. A hearing shall commence at 10:00 a.m. on Thursday, December 13, 2019 or such other date and time as shall be set by the Bankruptcy Court (the “**Hearing Date**”).

5. The above schedule may be modified only by the Bankruptcy Court or pursuant to an agreement of the Parties (which may be confirmed by email) subject to approval by the Bankruptcy Court.

6. This Stipulation may be executed in one or more counterparts, including facsimile or electronic counterparts, all of which together shall constitute one and the same instrument.

7. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the
date first above written.

Dated: New York, New York
October 30, 2019

CLEARY GOTTLIEB STEEN &
HAMILTON LLP

WEIL, GOTSHAL & MANGES LLP

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By: /s/ Sunny Singh

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SO ORDERED:

/s/ Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Dated: White Plains, New York
October 30, 2019